IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN ATJODHPUR
---

(1) CIVIL WRIT No. 4272 of 2005

U.O.I.,& ORS.
V/S
CENTRAL ADMI.TRIBUNAL,JODHPUR & ORS.

(2) CIVIL WRIT No. 4273 of 2005

U.O.I.,& ORS.
V/S
CENTRAL ADMI.TRIBUNAL,JODHPUR & ORS.

(3) CIVIL WRIT No. 4274 of 2005

U.O.I.,& ORS.
V/S
CENTRAL ADMI.TRIBUNAL,JODHPUR & ORS.

Mr. JP JOSHI & Mr. MANOJ BHANDARI, for the appellant /petitioners.

Mr. SN TRIVEDI, for the respondents.

Date of Order : 5.12.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

The Central Administrative Tribunal, Jodhpur Bench, Jodhpur decided three Original Applications by its common judgment dated 24.02.2005, whereby the original applications of the applicants were allowed. Aggrieved by the judgment, appellants have maintained three separate writ petitions, out of which Writ Petition No.4272/2005 was listed for hearing and

during the course of arguments, learned counsel for the parties requested to call for and decide other two similar writ petitions, being No.4273/2005 and 4274/2005. Pursuant to the request made by the learned counsel for the parties, aforesaid writ petitions were also called and heard together with Writ Petition No.4272/2005.All the aforesaid three writ petitions are decided by this common order.

For the purpose of adjudication of the issue involved in the present writ petitions, we have mainly taken notice of the facts narrated in the Writ Petition No.4272/2005. The facts giving rise to the present writ petition are that non-petitioners preferred an Original Application before the Central Administrative Tribunal, stating that they had undergone Apprentice Training Course from I.T.I. Institute under the provisions of the Apprenticeship Act, 1961. All the applicants qualified apprentice examination and were given national trade certificate from National Council for Vocational Training (for short, 'NCVT'). It was pleaded in the original applications that the Railway Administration invited applications for the purpose of engagement of fresh face substitutes in Group 'D' in Bikaner Division vide communication dated 10.09.2004. The consideration of the candidate was restricted from and amongst Act

Apprentices who were given apprenticeship training by the Railways. In that regard, the policy decision was taken by the General Manager of the Northern Railways on 30.08.2004. The said policy decision was challenged by the applicants, mainly on the ground that action of the Railways is discriminatory, thus is violative of Articles 14 and 16 of the Constitution, because the applicants cannot be deprived from the right of consideration for appointment as fresh face substitutes. It was further contended that the policy decision of the General Manager dated 30.08.2004 is even contrary to the circular issued by the Board, clarifying the position of engagement of fresh face substitutes vide Instructions dated 21.06.2004. It was submitted that the Board had issued instructions on 21.06.2004, clarifying the position as to whether the course completed act apprentices can be engaged as substitute in Group 'D' and therein, it was clarified that the course completed apprentices can be engaged as substitute in Group 'D' under General Manager's powers. Referring to the said instructions of the Board, it was tried to project that the Board had not limited the engagement of fresh face substitutes in Group 'D' from and amongst the apprentices taken training from the railways, therefore, the circular of the General Manager dated 30.08.2004, limiting engagement as fresh face substitutes from and amongst

the apprentices taken training from Railways alone, was contrary to the instructions of the Board and even earlier circular issued by it wherein apprentices taken training from Railways were extended benefit of preference only if all things being equal.

Railways had filed a detailed reply to the original application, stating that fresh face substitutes would be engaged only as a time-gap arrangement, purely as a temporary measure, till regularly selected candidates are appointed and at the time when the regular selection to the post would be made, applicants and others would be permitted to compete with each other for selection, which otherwise had to be under-taken by the Railway Recruitment Board. It was further stated that the appointment of fresh face substitutes was restricted to the candidates from and amongst the course act apprentices of Railways, for the reason that those apprentices were acquainted with the working of the Railways, thus were more useful for stop-gap arrangement. Hence, the Railways Establishment can give preference to such apprentices and, in those circumstances, no legal right of the applicants is being infringed. Certain preliminary objections were also taken, stating that it is not being a case of

direct recruitment, but engagement of casual labourers. Thus, the original application is not maintainable, more so, there exists clear declaration to the effect that the candidate engaged as fresh face substitute would have no right of regularization. Then, it was further being stated that the joint original application, so preferred by the applicants, is not maintainable as facts of the each candidate is different, though the same have not even been submitted.

Learned Central Administrative Tribunal, thereafter, accepted the original applications and set aside the circular impugned by the applicants, with a further direction that all subsequent proceedings pursuant to the circular/order dated 30.08.2004 are also quashed and set aside, but Railways would not be precluded to take recourse to engage the fresh face substitute, keeping in view the relevant instructions/rules in force and as per the observations made by the Tribunal.

Learned Senior Counsel, Shri J.P.Joshi, appearing for the railways, urged that the Central Administrative Tribunal has not considered the fact that the General Manager was competent to take a policy decision regarding engagement of fresh face

substitutes, looking to the circumstances and, in the interest of the administration, an apprentice having acquaintance with the Railways working alone is given right of consideration for such engagement, then the said policy decision cannot be assailed by the applicants, more so, when engagement of fresh face substitute is till regularly selected candidates are made available. It was further submitted that Railways have already started process of regular selections and the same is likely to be completed shortly. Thus, in those circumstances, there exists no right in favour of the applicants so as to assail the circular dated 30.08.2004 when pursuant to the said circular, fresh face substitutes were engaged by the Railways and are working. Our attention was also drawn towards the order passed by this Court on 04.10.2007, whereby the interim order passed in favour of the Railways on 03.08.2005 was modified to the effect that Railways should complete the process of selection within six months and if they failed to do so, temporary employees will be required to be retrenched. Thus, referring to the said order, it was submitted that the present matter remains only of academic nature. Hence, the judgment of the Tribunal can be set aside, not only based on reasonings given in the argument, but looking to the subsequent events of initiation of process of regular selection for regular recruitment

and this Court's order dated 04.10.2007.

Per contra, learned counsel appearing for the non-petitioner-applicants submitted that the Circular dated 30.08.2004 cannot be allowed to stand as the same is issued by the General Manager beyond his competence and is otherwise violative of Articles 14 and 16 of the Constitution. Thus, merely for the reason that the process of regular recruitment has been initiated during the pendency of that writ petition, the basic issue of validity of order/policy decision dated 30.08.2005 is not wiped out, more so, when even after the judgment of the Tribunal, the Railways have not taken a decision either to withdraw the circular dated 30.08.2004 or to say that in future, right of consideration would be given to all who have undertaken apprentice training under the Act of 1961 whether from the Railway Establishment or from other I.T.I. Institute. Thus, it was submitted that if the basic issue regarding validity of the policy decision of the General Manager is not decided, the setting aside of the judgment of the tribunal would meant that the General Manager and Railways would be at liberty to give right of consideration to only one set of persons in violation of Articles 14 and 16 of the Constitution, more so, when the issue involved in the present matter is not res integra, in view of

the authoritative judgments on the subject by the High Court as well as by the Apex Court. It was submitted that not only as per the policy of the Railways Board, but even the judgment of the Apex Court referred in the impugned judgment of the Tribunal shows that right of consideration exists in faour of all the apprentices who have taken training as per Apprentices Act. It was also urged that in view of the order passed by the High Court on 04.10.2007, if the Railway agrees that in future,they will not exclude the applicant and like nature persons from right of consideration for engagement of fresh face substitutes, the matter can be concluded with a direction that the employees engaged pursuant to the circular dated 30.08.2004 will continue as per the order dated 04.10.2007, i.e., for a maximum period of six months, and by the time, the Railways should complete the process of selection for direct recruitment and in case, the said process is delayed for any reason, then to discontinue those fresh face substitutes engaged pursuant to the policy decision of the Railways dated 30.08.2004.

We have considered the rival submissions of the learned counsel for the parties and scanned the matter, after going through the record. The learned Tribunal considered each and every aspect of the

matter and thereupon it came to the conclusion that in the light of the judgment of the Apex Court referred therein, the applicant-non-petitioners cannot be denied a right of consideration. In that respect, the circular of the Railways was also referred, where Railway Board has taken a decision as to how the apprentices would be recruited on the post, which includes Group 'D' post. The said circular is reproduced for ready reference hereunder :-

> "**19. Absorption of Course Completed Act Apprentices**
> 19.1 In terms of para 10 of Schedule V of the Apprenticeship Rules, 1991 notified on 15.7.1992 by the Ministry of Labour, it shall not be obligatory on the part of the employer to offer an employment to the apprentice on completion of period of his apprenticeship training in his establishment nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.
>
> 19.2 In pursuant to he Hon'ble Supreme Court judgments dated 12.1.1995 in the case of U.P. State Road Transport Corporation and Others v. U.P.Parivahan Nigam Shikshuk Berozgar Sangh and Others, the following instructions have been issued :
>
> 19.2.2. For recruitment to the posts of :-
>
> 0 Skilled Artisans,
>
> 0 Group 'C' posts for which Engineering Degree and Engineering,
>
> 0 Diploma are the qualifications,
>
> 0 Diesel Electric Assistants,
>
> 0 Group 'D' posts.

> Other things being equal between two candidates the candidate who is course completed Act Apprentice trained in Railway Establishment will be given preference over the candidate who is not such an apprentice. However, there would be no change in the procedure of the recruitment and the selection for recruitment will be in accordance with the merits of the eligible candidates."

The perusal of the aforesaid circular reveals that only preference has been given to the apprentices who have taken training in the Railway Establishment, but that too when all the things being equal between the two candidates. Thus, contrary to the Board circular, the General Manager was not having authority to exclude the apprentices who have taken training from recognized I.T.I. Institute and were awarded Certificate as per Apprentice Act, 1961. Hence, giving right of consideration to the course completed apprentice trained in the Railway Establishment alone vide impugned circular/order dated 30.08.2004, cannot sustain in the eye of law, more so, when there exists no bifurcation of the apprentice only on the ground that one trained by the Railway Establishment and another by the I.T.I. Institute, because the Apprentice Act, 1961 does not provide such bifurcation. The argument of the learned counsel for the Railways that course completed apprentice training by the Railway Establishment are acquainted with the

Railway working, were considered to be useful. However, on this argument, learned counsel for the Railway was asked as to whether in past such a course was ever being adopted by the Railways. However, the learned counsel for the Railways could not show any such arrangement being made by the Railways in the past, which obviously, means that all act apprentices were given right of consideration in part. In view of the Railway Board circular quoted above also,a discrimination cannot be made between act apprentices. In fact course completed act apprentices are at par under the Apprentice Act of 1961. Thus, Railways cannot make a distinction between similarly situated apprentices without there being such a provision under the Apprentice Act of 1961 as well as under the Rules of the Railways itself. Even the Railway Board, in its decision dated 21.06.2004, has not provided engagement of the fresh face substitutes from and amongst the course completed act apprentices trained by the Railways. Rather clarification given in the said order makes it clear course completed act apprentices would be eligible for appointment as substitutes. If the Railway Board has not taken a policy decision to engage only course completed act apprentices by the Railway Establishment as substitutes, then a subordinate authority, like General Manager cannot take a decision which otherwise goes against the Board

circular quoted as well as the clarification given by the Railway Board dated 21.06.2004.

It is now settled that a right of consideration for engagement or appointment cannot be curtailed of persons who are having the required eligibility as is of others, such as in the present matter, the required eligibility of being engaged for Group 'D' post is a course completed act apprentice training and thus, the Board circular does not provide that such course completed apprentice training should be only of Railway Establishment, therefore, right of consideration of the qualified person like the applicants was curtailed in violation of Articles 14 and 16 of the Constitution of India, more so, it is also settled that even for such temporary arrangements, action of the administration to call for list of the candidates only of Employment Exchange and not to consider those who are not registered with the Employment Exchange, is held to be violative of Articles 14 and 16 of the Constitution of India. Thus, in the light of the discussion made above, we find no error in the judgment of the Central Administrative Tribunal so far as it set aside the order/circular dated 30.08.2004. The judgment of the Tribunal is thus, maintained to that extent.

The Central Administrative Tribunal has further given direction to the effect that as a consequence of setting aside the impugned order dated 30.08.2004, subsequent proceedings thereof are also quashed and set aside. However, said direction cannot be allowed to stand for the reason that during the intervening period, not only proceedings were conducted, but the same were completed and fresh face substitute were engaged with a clear arrangement that they would be continued in the service of the Railways, till regularly recruited Group 'D' employees are available. It has also come on record that the Railways have already initiated process of regular selection which is likely to be completed shortly. Thus, in those circumstances, the direction of the Tribunal to set aside the subsequent proceedings pursuant to the circular dated 30.08.2004 cannot be allowed to be maintained, more so when this Court earlier, vide its order dated 04.10.2007, clarified that Railways should complete the process of selection within six months and if they fail to do so, the temporary employees would be required to be retrenched. Hence, while setting aside the portion of the judgment of the tribunal as indicated above, we make it clear that the Railways should complete process of direct recruitment as expeditiously as possible, but not later than four months by now. However, if for any reason, Railways

failed to complete the process of selection within a period of four months from today, then fresh face substitutes will have to be discontinued pursuant to their engagement based on circular dated 30.08.2004 as it has already been struck down. In fact, continuance of fresh face substitutes is allowed for a limited period, looking to the fact given by the counsel for Railways during the course of argument that they will complete the process of selection within the time specified in the order dated 04.10.2007 thus, substitutes may be allowed to continue for another four months, otherwise, in our opinion, on quashing of the order dated 30.08.2004, engagement of fresh face substitutes cannot be held to be proper, but to balance the equities, the order, as aforesaid, has been passed by us.

Accordingly, all the three writ petitions are dismissed. The judgment of the Central Administrative Tribunal is maintained regarding quashing of the order/circular dated 30.08.2004, however further direction regarding quashing of further proceedings thereof is modified as observed above.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

scd.